



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-2(c)

MARK GOLDMAN  
A Professional Corporation  
Attorneys At Law  
55 Washington Street  
East Orange, New Jersey 07017  
(973)-677-9000  
Virginia E. Fortunato, Esq. - #VEF-0787

*Attorneys for Debtor/Plaintiff, Jack Kemp, Jr.*

In Re:

**JACK KEMP, JR.,**

Debtor,

**JACK KEMP, JR.,**

Plaintiff,

v.

**WASHINGTON MUTUAL BANK, F.A.,  
a/k/a WASHINGTON MUTUAL HOME  
LOANS, INC.; WELLS FARGO HOME  
MORTGAGE, a/k/a WELLS FARGO  
BANK, N.A.; RCR PRODUCTS AND  
SERVICES, AS AGENT FOR WELLS  
FARGO BANK, N.A., and SHAPIRO  
DIAZ, LLP;**

Defendants.

Case No. 03-49517/DHS

Chapter: 13

Hearing Date: April 16, 2009  
at 10:00 a.m.

Judge: Donald H. Steckroth

Adv. Pro. No. 08-01435/DHS

**ORDER OF DISMISSAL/SETTLEMENT OF DEFENDANT, WELLS FARGO HOME  
MORTGAGE, A/K/A WELLS FARGO BANK N.A.**

  
Honorable Donald H. Steckroth  
United States Bankruptcy Judge

**DATED: 5/11/2009**

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Debtor: Jack Kemp, Jr.  
Case No.: 03-49517/DHS - Chapter 13  
Adv. Pro.: Jack Kemp, Jr.  
v. Washington Mutual Bank, F.A., a/k/a Washington Mutual Home Loans, Inc.; Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A.; RCR Products and Services, as Agent for Wells Fargo Bank, N.A.; and Shapiro & Diaz, LLP  
Adv. Pro. No.: 08-01435/DHS  
Caption: Order of Dismissal/Settlement of Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A.

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**THIS ADVERSARY PROCEEDING** being opened before the Court by Virginia E. Fortunato, Esq., attorney for the Debtor/Plaintiff, Jack Kemp, Jr., and Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A. having been named as a party Defendant to this action, and the Debtor/Plaintiff having negotiated a settlement with this Defendant and for good cause having been shown:

**IT IS HEREBY,**

**ORDERED**, that the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A. shall remit the sum of \$9,000.00 in attorneys' fees to Mark Goldman, P.C. to be applied to Debtor's/Plaintiff's attorneys' fees within 20 days from the date of this Order; and it is further,

**ORDERED**, that the Debtor's/Plaintiff's mortgage loan with the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., any of its future predecessors in interest, successors or assigns is hereby declared current as of February 28, 2009 with the Debtor/Plaintiff and Defendant agreeing that the principal balance on the loan is \$119,896.42 as of February 29, 2009; and it is further,

**ORDERED**, that the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors, or assigns are hereby estopped from assessing any attorneys' fees and other fees and/or costs to the Debtor's/Plaintiff's mortgage loan for a Foreclosure Complaint filed on January 23, 2008 with the Superior Court of New Jersey, Chancery Division, Essex County bearing Docket No. F-3193-08; and it is further,

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Adv. Pro. No.: 08-01435/DHS  
Caption: Order of Dismissal/Settlement of Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A.

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**ORDERED**, that the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors, or assigns are hereby estopped from assessing any attorneys' fees and other fees and/or costs to the Debtor's/Plaintiff's mortgage loan for the its Certification of Default filed with the United States Bankruptcy Court, District of New Jersey on April 10, 2008 in the Debtor's/Plaintiff's Chapter 13 Bankruptcy Proceeding, bearing Case No. 03-49517/DHS; and it is further,

**ORDERED**, that the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors, or assigns are hereby estopped from assessing any attorneys' fees and other fees and/or costs to the Debtor's/Plaintiff's mortgage loan for the pending Adversary Complaint bearing Adversary Proceeding No. 08-01435/DHS, which this Order is resolving; and it is further,

**ORDERED**, that the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors, or assigns will be in violation of 11 U.S.C. §524 discharge injunction if this Court finds that the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors, or assigns assessed attorneys' fees and other fees and/or costs as set forth in Paragraphs 4, 5, and 6 of this Order subsequent to the date of this Order; and it is further,

**ORDERED**, that the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., has applied to Debtor/Plaintiff's account credits totaling \$2,132.44 (consisting of credits as follows: \$1867.44 in foreclosure fees and costs that were charged to the loan, \$140.00 for an error in the Defendant's proof of claim, and \$125.00 for the overcharging of fees allowed in a consent

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order);

**ORDERED**, that from the credits totaling \$2,132.44, the sum of \$619.50 was transferred to recoverables to bring that balance to zero and the remaining funds of \$1512.94 were combined with \$40.88 in suspense to make the February 2009 payment; it is further

**ORDERED**, that Debtor/Plaintiff's February 2009 mortgage payment (check no. 209) shall be applied as the March 2009 mortgage payment and that Debtor/Plaintiff's March 2009 mortgage payment (check no. 215) shall be applied as the April 2009 mortgage payment; it is further

**ORDERED**, that the Debtor/Plaintiff shall resume making monthly mortgage payments to the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., as of May 1, 2009, which shall be accepted by the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo N.A.; and it is further;

**ORDERED**, that the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors or assigns shall not seek to collect any remaining balance (approximately \$55.35 for recording costs and pro rata MIP as indicated in a letter to Debtor/Plaintiff dated October 7, 2008) owed to the Defendant, Washington Bank, F.A., a/k/a Washington Mutual Home Loans, Inc., on the Debtor's/Plaintiff's Mortgage Loan No. 8021395846 which was transferred/assigned to the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A.; and it is further,

**ORDERED**, that in the event that Defendant, Washington Bank, F.A., a/k/a Washington Mutual Home Loans, Inc. or Defendant Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors or assigns attempt to collect or charge the Debtor/

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Plaintiff's mortgage loan for the balance of \$55.35 owed to the Defendant Washington Bank F.A., a/k/a Washington Mutual Home Loans, Inc., for the transfer/assignment of the loan to Defendant Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., Debtor/Plaintiff shall notify his attorney, who will notify the attorney for Defendant Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors or assigns so that the Defendant can either pay the balance to Defendant Washington Bank F.A., a/k/a Washington Mutual Home Loans, Inc. or remove the charge from Debtor/Plaintiff's mortgage loan; and it is further,

**ORDERED**, that in the event that Defendant Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors or assigns report any information regarding the foreclosure instituted against the Debtor/Plaintiff in January, 2008 to the credit reporting agencies Debtor/Plaintiff shall notify his attorney, who will notify the attorney for Defendant Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors or assigns so the Defendant can remove any information regarding the foreclosure instituted against the Debtor/Plaintiff in error in January, 2008; it is further and it is further,

**ORDERED**, that the Parties, Debtor/Plaintiff and Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors, or assigns waive any and all rights to seek judicial review or otherwise challenge or contest the validity of this Order; and it is further,

**ORDERED**, that this Court shall retain exclusive jurisdiction to enforce the terms of this Order, as well as to hear and adjudicate any motions for its enforcement or contempt related thereto;

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and it is further,

**ORDERED**, that the Debtor/Plaintiff and the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., have agreed that entry of this Order resolves only those matters between them arising from the facts and circumstances in this Adversary Proceeding up to the date of the entry of this Order; and it is further,

**ORDERED**, that this Order will be binding on the Parties, Debtor/Plaintiff and Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors, or assigns; and it is further,

**ORDERED**, that the Debtor/Plaintiff and the Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., have agreed that entry of this Order resolves only those matters between them arising from the facts and circumstances in this Adversary Proceeding up to the date of the entry of this Order; and it is further,

**ORDERED**, that this Order will be binding on the Parties, Debtor/Plaintiff and Defendant, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A., its future predecessors in interest, successors, or assigns; and it is further,

**ORDERED**, that Debtor/Plaintiff shall receive \$500.00 from the funds paid by Defendant Shapiro and Diaz to Debtor/Plaintiff pursuant to this Court's Order dated June 20, 2008 and his attorneys shall receive the sum of \$2000.00 from the funds received pursuant to the same order;

**ORDERED**, that Debtor/Plaintiff's attorneys shall refund the sum of \$1500.00 paid by Debtor/Plaintiff at the time his attorneys were retained to institute the instant adversary proceeding;

**ORDERED**, that Debtor/Plaintiff's attorneys have agreed to accept funds paid by the Defendants, Wells Fargo Home Mortgage, a/k/a Wells Fargo Bank, N.A. and Washington Mutual

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Mortgage, a/k/a Wells Fargo Bank, N.A.

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Bank, F.A., a/k/a Washington Mutual Home Loans, Inc. as outlined in this order as payment in full  
for their services regarding the instant adversary proceeding; and it is further

**ORDERED**, that the Release attached to this Order as Exhibit A is hereby incorporated and  
made part of this to this Order.

# EXHIBIT "A"



**RELEASE**

This Release, dated April 15, 2009, is given by the Releasor, JACK KEMP, JR. referred to jointly as "We" or "Us" with the Releasor, being referred to individually as "I" or as "Kemp,"

TO, WELLS FARGO HOME MORTGAGE, INC. ("Wells Fargo") and their respective agents, servants, employees, representatives, officers, directors, attorneys, predecessors, successors and assigns, referred to collectively as "the Released Party", "You" or "Your".

1. Release. We release and give up any and all claims which we may have against You. This releases all claims against You, including those of which We are not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. We specifically release the following claims:

Any and all claims the Releasor has against the Released Party arising out of the filing and/or foreclosure litigation filed by the Released Party and/or its counsel, on behalf of the Releasor (Wells Fargo) which foreclosure was filed by counsel for Wells Fargo in the Superior Court of New Jersey, Essex County, Chancery Division, under Docket No. F-3193-08, in or about January 23, 2008, and any other claims which were or which could have been asserted by the Releasor in the lawsuit ("third-party action") filed by the Releasor, JACK KEMP, as the Debtor/Plaintiff, in the Adversary Proceeding which was filed by him against the Releasor and others in the United States Bankruptcy Court, District of New Jersey, captioned, In Re: Jack Kemp, Jr., Debtor, and Jack Kemp, Jr. v. Washington Mutual Bank, Wells Fargo Home Bank, N.A., Wells Fargo Home Mortgage, and Shapiro Diaz, LLP et al, filed under Adversary Proceeding filed by Jack Kemp Jr. under Adv. Pro. No. 08-01435/DHS and/or the companion Matter pending in the US Bankruptcy Court under Case No. 03-39517/DHS (Ch. 13), and any motions relating thereto with regard to the alleged violation of the automatic bankruptcy stay and for the enforcement of the automatic stay, and/or for counsel fees, costs, expenses, damages and/or sanctions, and relating to the filing of the foreclosure as to the security interest held by the Releasor as to certain

property which is located at or about 10 Herpers Street, Irvington, NJ 07111, which property is owned by Jack Kemp Jr. but subject to certain security interests held by the Releasor.

The Releasor understands and agrees that this release shall also forever waive, settle and resolve any and all claims he may have against the Released Parties for the following claims asserted by the Releasor, JACK KEMP, Jr. and/or by his attorneys, made in the aforesaid lawsuit or Adversary Proceeding arising out of the aforesaid transactions, including: (a) The Releasor forever waives, settles, dismisses and relinquishes any and all claims I may have against the Released Party for damages including any and all counsel fees, counsel fee applications, costs, damages, sanctions and/or expenses for expert reports, deposition and transcript costs, all filing fees and all other expenses associated with or which I may have pursued or have a claim relating to or regarding the following matters or litigation: (1) defending the aforesaid foreclosure action; (2) filing any application for relief in the US Bankruptcy Court in the Chapter 13 case; and (3) prosecuting or advancing the aforesaid Adversary Proceeding filed in US Bankruptcy court.

(b) The Releasor releases you (Wells Fargo) and its successors, assigns, officers, directors, shareholders, agents, servants and employees from any and all liability and for any claim for payment or contribution to damages or costs from any of the claims or matters asserted by Jack Kemp, Jr. and or/his attorneys which Mr. Kemp may have against the Releasor in connection with the aforesaid litigation filed in which he seeks compensation for damages, counsel fees, sanctions, costs, and expenses, for any alleged violation of the automatic stay through by virtue of the filing of the aforementioned foreclosure action by the Released Party.

2. Payment and other consideration. A total payment will be made to the Releasor, Kemp, of \$9,000 paid by Wells Fargo for the claim made by Mr. Kemp in the aforesaid Adversary Proceeding for counsel fees, costs, and expenses. The Releasor agrees that it will not seek any further monetary relief or compensation from the Released Party (except for agreed upon adjustments

as to the debtor's mortgage account as previously outlined in the Order of Dismissal/Settlement between Debtor/Plaintiff, Jack Kemp and Defendant Wells Fargo. It is expressly understood that as a condition of payment, the Releasor agrees to give up and dismiss any and all claims he may have against the Released Party arising out of the aforesaid transactions and/or litigation and/or bankruptcy action, including the Adversary Proceeding filed by Mr. Kemp. This Release specifically does not set forth or exhaust the Debtor's claim to certain adjustments and/or credits which will be made to Kemp's account with Wells Fargo and which will be set forth in a separate document. Said adjustments or credits relate to the mortgage held by Wells Fargo on the subject property. Said credits or adjustments having been set forth and agreed to by counsel as set forth in the Order of Dismissal/Settlement between Debtor/Plaintiff, Jack Kemp and Defendant Wells Fargo.

Pursuant to Perreira v. Rediger, 330 N.J. Super. 455 (App.Div. 2000) and other applicable law, I further personally guarantee that all liens or monetary obligations owed whether public, private or otherwise, for any child support, including arrearages, medical, wage, or other benefits received by me or paid by any third party on my behalf have been satisfied and paid off in their entirety by me and/or my authorized agent out of the funds received pursuant to this Release, and I further agree to indemnify and hold harmless you, the Released Party and your attorneys, from any liability they might incur to any lien holder for the payment of any actual or equitable lien amount, whether public, private or otherwise.

3. Who is Bound. I understand that I am bound by this Release and that anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. Signature. I understand and agree to the terms of this Release. In signing this Release, I acknowledge that I have read it, understand it, agree to its terms and to be bound by it and that I have had the opportunity to consult legal counsel concerning its meaning and effect on my legal rights.

Witnessed or Attested by:

Jack Kemp

4/15/2009

Eugene Lokret  
Attorney for Jack Kemp

4/15/09

STATE OF NEW JERSEY :  
COUNTY OF ESSEX : ss.

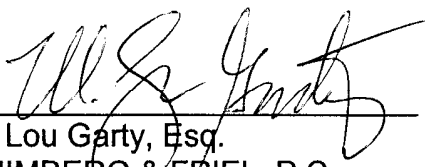
I certify that on April 15, 2009, Jack Kemp, Jr., personally came before me and acknowledged under oath, to my satisfaction, that this person is: (a) the person named in the Release; (b) personally signed this document; and (c) signed, sealed and delivered this document as his or her voluntary act and deed.



Notary Public, State of New Jersey

KAREN LEE THOMPSON-SAXON  
Notary Public of New Jersey  
My Commission Expires 03/09/2010

Prepared by:

  
M. Lou Garty, Esq.  
SHIMBERG & FRIEL, P.C.  
Attorneys for Wells Fargo Home Mortgage